

REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-19 are in this case. Claims 3, 5 and 10-19 were withdrawn by the Examiner from consideration under traverse of the Applicant as drawn to a non-elected invention. Claims 1, 2, 4 and 6-9 have been rejected under § 102(b) or § 103(a). Independent claim 1 has now been amended. Claims 11-19 have been canceled. New independent claim 20 and dependent claims 21-25 have been added.

The claims before the Examiner are directed toward an unstable container for storing and dispensing alcoholic or carbonated beverages (claim 1) or which are formed as a metal can with a ring pull opening device (claim 20). Neither of these combinations can fairly be considered to be taught or rendered obvious over the laboratory chemistry vessels of the cited art of record.

Summary of Interview

Reference is made to an interview conducted on Monday, May 9, 2005, between Examiner Stephen Castellano for the P.T.O. and Mr. Daniel Michaels, speaking under the auspices of Dr. Mark Friedman for the Applicant. The interview related to the § 102(b) and § 103(a) rejections of claims 1 and 2, respectively, over the Mawhirt et al. and Green references. No agreement was reached as to the allowability of any claim.

The Applicant first suggested to the Examiner that claim 2, reciting a non-resealable seal, is non-obvious over the cited art because the prior art is chemical flasks/test-tubes where non-resealable closures are neither taught nor required. The Examiner stated that he was skeptical about this argument on the basis that, any time

there is a need to seal a test tube, he believed that it is reasonable to take any known closure from the beverage-container art to do so, and that non-resealable closures may be useful for purposes such as rendering a test tube tamperproof.

The Applicant further suggested to the Examiner that the rejections might be overcome by explicitly reciting “a quantity of potable beverage” as part of the claim. Here too, the Examiner indicated that this wording would probably not be sufficient to distinguish over the art of record since water answers to the definition of a “potable beverage” and is commonly used in chemical flasks/test-tubes.

The Applicant thanks the Examiner for his constructive comments which have been carefully considered by the Applicant during preparation of the amendments to be discussed below.

Non-Elected Claims

In anticipation of an allowance, withdrawn claims 11-19 which are not based upon a generic base claim have now been canceled without prejudice. The Applicant retains the right to present the canceled claims at a later date in the context of a divisional application.

Withdrawn claims 3, 5 and 10, as well as new claim 24, all depend from a generic base claim. The Applicant respectfully requests that these claims be given due consideration in the event that their respective base claims are found to be allowable.

§ 102(b) Rejections

The Examiner has rejected claims 1 and 7-9 under § 102(b) as being anticipated by Mawhirt et al. (US 4944924). The Examiner has also rejected claims 1, 7 and 8 under § 102(b) as being anticipated by Green (US 5733786). The Examiner’s rejections are respectfully traversed.

Mawhirt et al. and Green both relate to containers (test tubes or flasks) for use in laboratory chemistry or the like. In the case of Mawhirt, the test tubes are for blood tests while in Green, the flask is used in analysis of mercury content in a sample. The containers disclosed are neither intended for nor are suitable for storing and dispensing beverages.

While continuing to traverse the Examiner's rejections, the Applicant has, in order to expedite the prosecution, chosen to amend independent claim 1 in order to clarify and emphasize the crucial distinctions between the device of the present invention and the devices of the Mawhirt and Green patents cited by the Examiner. Specifically, claim 1 has been amended to clarify that the container stores a volume of a beverage selected from the group consisting of an alcoholic beverage and a carbonated beverage, thereby clearly distinguishing from the biological or chemical testing devices of the cited art.

Support for these amendments can be found in the specification. Specifically, support for the beverage being alcoholic can be found in the reference to "beer" on page 1 of the specification. Similarly, support for the beverage being carbonated can be found in the reference to "beer" on page 1 of the specification.

New dependent claim 25, depending from claim 1, recites that the closure arrangement initially seals the beverage within the container together with a quantity of trapped gas at a pressure above atmospheric pressure. Although this feature is not explicitly stated in the specification, it is self evident to any person skilled in the art that retail containers for carbonated beverages such as beer are sealed at pressure above atmospheric pressure. The Applicant therefore respectfully submits that this amendment does not introduce any subject matter which was not already clear to one ordinarily skilled in the art on the basis of the disclosure as filed.

Amended independent claim 1 now features language which makes it absolutely clear that the device of the present invention is a beverage container for storing and dispensing alcoholic or carbonated beverages, thereby clearly distinguishing over the chemistry flasks of the cited art and rendering such art non-analogous to the present invention. In the field of beverage containers, no hint or suggestion of the unstable container feature of the present invention has been found. The Applicant therefore believes that the amendment of the claims completely overcomes the Examiner's rejections on § 102(b) grounds.

§ 103(a) Rejections

The Examiner has rejected claims 2, 4 and 6 under § 103(a) as being unpatentable over Mawhirt. The Examiner has also rejected claims 2, 4, 6 and 9 under § 103(a) as being unpatentable over Green. The Examiner's rejections are respectfully traversed.

In justifying his rejection of claims 2 and 4 relating to the ring-pull closure and the metal container material, the Examiner has taken official note that ring pull closures and metal material are well known and therefore do not render these claims patentable.

In response, the Applicant respectfully wishes to point out that, while metal cans are indeed well known in the field of beverage containers, they are unheard of and clearly unsuitable in the proposed combination with the chemical flasks or test tubes of Mawhirt and Green. For example, in the case of Mawhirt, the test tubes for blood samples should clearly be transparent in order to verify that the tube contains a sample and that the sample is in good condition. Similarly in the case of Green, it is necessary to use a transparent glass flask in order to see the air bubbles produced at the gas dispersion tube in order to verify that the system is operating correctly and to

know when to start timing 5 minutes as specified at column 9 lines 8-11. Thus, the combination proposed by the Examiner of Mawhirt or Green with the official note regarding (opaque) metal cans would render the cited references unsuitable, or at least less suitable, for their intended purposes. The combination therefore lacks the motivation to combine which is a requirement for a *prima facie* obviousness rejection as detailed in section 2143.01 of the MPEP.

While continuing to traverse the Examiner's rejections, the Applicant has, in order to expedite the prosecution, chosen to submit a new independent claim 20 in order to further clarify and emphasize the features of the metal can and ring-pull implementation of the invention. Specifically, new independent claim 20 specifies that the receptacle of the invention is a metal can configured for sealingly containing the volume of the beverage, the metal can being formed with a ring pull device configured for non-resealably opening the metal can in such a manner as to form an opening. In the context of such a container, the Applicant respectfully submits that the unstable container features as defined in the end of the claim are clearly novel and non-obvious.

New dependent claims 21-24 depend from new independent claim 20 and parallel original dependent claims 7-10, respectively. Claim 24 has been designated as "withdrawn", in keeping with the similar designation of claim 10.

Support for these amendments can be found in the specification, and specifically, in claims 2 and 4 as filed.

New independent claim 20 now features language which makes it absolutely clear that the device of the present invention is an unstable metal can with a ring pull opening device, thereby clearly distinguishing it from the field of chemical flasks and

test tubes. Favorable consideration of new independent claim 20, as well as claims 21-24 which depend therefrom, is respectfully solicited.

In view of the above amendments and remarks it is respectfully submitted that independent claims 1 and 20, and hence also dependent claims 2-10 and 21-25, are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



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